



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201431034

MAY 07 2014

T:EP:RA:72

**Uniform Issue List: 401-06-01**

**Legend:**

Company A =

Company B =

Plan A =

Plan B =

Dear ,

This letter is in response to your request dated December 31, 2013, submitted on your behalf by your authorized representative, in which Company A requests a private letter ruling that the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (the "Code") do not affect Company A's ability to offer a lump sum payment option, during a limited window period, to participants, beneficiaries and alternate payees, who are currently receiving annuity benefits under two defined benefit pension plans maintained by the Company A.

Company A is a wholly owned subsidiary of Company B. Company A sponsors two tax-qualified pension plans (the "Pension Plans") under section 401(a) of the Code which

are the subject of this ruling request. The Pension Plans are Plan A and Plan B. Each of the Pension Plans has a favorable determination letter.

Payment forms under Plan A generally include, in addition to the qualified joint and survivor annuity ("QJSA") (and, beginning January 1, 2008, the qualified optional survivor annuity ("QOSA") ), a single life annuity, joint and 50%, 75% and 100% survivor annuities, a life and 10-year certain annuity, as well as a lump sum payment option for active employees retiring on or after specified dates or under specific plan designs.

Payment forms under Plan B generally include, in addition to the QJSA (and effective January 1, 2009<sup>1</sup>, a QOSA), a single-life annuity, a joint-and-100% annuity, a life and 10-year certain annuity, and since \*\*\*\*, a lump sum payment for certain employees.

Despite the current funded status of the Pension Plans for ERISA funding purposes, the pension liabilities weigh heavily on Company B's balance sheet. The Company over the past years has taken steps to reduce the size of the Pension Plans on Company B's balance sheet.

Despite these efforts, the size of Company A's defined benefit pension obligations continues to be disproportionately large. Also, the plans continue to incur significant administrative costs for participants in pay status. For these reasons Company A desires to offer retired employees already receiving an annuity stream of payments the opportunity to convert the annuity into a lump sum payment.

Company A proposes to further reduce its obligations under the Pension Plans by amending Plan A and Plan B to implement a one-time window program that makes a lump sum payment option available to participants retiring after a certain date and who are in pay status. These include (1) participants who are currently receiving their pension benefits in annuity form, (2) alternate payees who are currently receiving pension benefits in annuity form under a Qualified Domestic Relations Order, and (3) beneficiaries who are currently receiving either pre-retirement or post-retirement survivor benefits (collectively, "Covered Individuals").<sup>2</sup> The Company represents that this window program, which provides an opportunity to select a lump sum payment, will be offered on a one time basis to Covered Individuals.<sup>3</sup>

Under the amendment, the Covered Individuals would have a specified limited window period of no more than 180 days during which they could elect to receive in lieu of their current annuity what Company A represents is the actuarial present value of their remaining benefits under the aforementioned Plans, in the form of a single lump sum payment. The window period may consist of multiple phases, such as an opt-in phase

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<sup>1</sup> Under the Pension Protection Act of 2006 ("PPA"), the QOSA was not required to be included in Plan B until January 1, 2009.

<sup>2</sup> Certain subsets of these groups, in objectively determined and nondiscriminatory categories, may be excluded on account of administrative practicalities.

<sup>3</sup> For administrative reasons, the window program may be offered in tranches to portions of the Covered Individual population over time.

during which Covered Individuals would have the opportunity to proceed through the remainder of the window program and an election phase<sup>4</sup> during which Covered Individuals could elect to receive, in lieu of their current annuity, the actuarial present value of their remaining annuity payments in the form of an immediate lump sum, and to the extent the law requires, a qualified joint and survivor annuity (including a single life annuity for retirees who are not married), or a qualified optional survivor annuity.

Any such elections to receive a new distribution option would be subject to applicable spousal consent (which would include, where the law requires, both the current spouse and a former spouse if the Covered Individual has remarried since the original annuity starting date). Covered Individuals who elect a new distribution option would be treated as having a new annuity starting date on the first day of the month as of which their new benefit is payable for purposes of sections 415 and 417 of the Code. The value of the new distribution option will be based on the discounted stream of payments under the particular annuity form that the participant is receiving.

Each Covered Individual will be offered optional individualized financial counseling provided by a qualified and reputable financial advisor before making his or her election decision.

Company A represents that funding levels of Plan A and Plan B are expected to be more than sufficient such that the proposed lump sum window benefits would not trigger benefit restrictions under section 436 of the Code. In addition the company represents that the amendment will not change the ability of Covered Individuals to elect during the window period to receive qualified joint and survivor annuities or qualified optional annuities in accordance with sections 401(a)(11) and 417 of the Code.

Based on the facts and representations stated above, Company A requests a ruling that the minimum distribution requirements of Section 401(a)(9) will not be violated if Company A amends Plan A and Plan B to offer the proposed lump sum window to certain participants, beneficiaries and alternate payees for whom annuity payments have commenced under the plans.

#### APPLICABLE LAW

Section 401(a)(9) of the Code and the regulations thereunder ("Regulations") provide rules relating to required minimum distributions from qualified plans. Section 401(a)(9) of the Code was enacted to ensure that the amounts contributed to qualified retirement plans were used for retirement by requiring that retirement payments begin no later than a certain date, with no less than a certain amount being distributed each year of retirement. The legislative history of the original version of section 401(a)(9) of the Code in 1962 stated that its purpose is in "preventing lifetime accumulations which might escape income taxation altogether." 108 Cong. Rec. 18755, 18756 (1962) (statement of Sen. Smathers).

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<sup>4</sup> Covered Individuals who opt in would be under no obligation to change their current form of payment.

In general, section 401(a)(9)(A) of the Code states that a trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee —

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations over the life of employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

Section 401(a)(11) of the Code generally provides that a defined benefit plan will not be considered a qualified plan unless vested benefits, with respect to a married participant who dies before the annuity starting date, are payable in the form of a qualified preretirement survivor annuity and, with respect to a married participant who dies after the annuity starting date, a qualified joint and survivor annuity.

Section 415(a)(1)(A) of the Code provides that a trust which is a part of a pension plan will not constitute a qualified trust if the pension plan provides for the payment of benefits which exceed the limitation of section 415(b). Section 415(b)(2)(B) of the Code generally provides that if the benefit under a defined benefit plan is payable in any form other than a straight life annuity, the determination as to whether the section 415(b) limit has been satisfied shall be made by adjusting the benefit so that it is equivalent to a straight life annuity.

Section 417(a) of the Code provides that a plan meets the requirements of section 401(a)(11) if, among other requirements, each participant may elect during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both). Section 417(a)(6) of the Code defines the applicable election period as meaning, in part, in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date.

Treas. Reg. § 1.401(a)(9)-6, Q&A-1(a), in pertinent part, states that in order to satisfy section 401(a)(9) of the Code, distributions of the employee's entire interest under a defined benefit pension plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with A-3 of this section. Once payments have commenced over a period, the period may only be changed in accordance with A-13 or A-14 of this section. Except as otherwise provided in this section (such as permitted increases described in A-14 of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

Treas. Reg. § 1.401(a)(9)-6, Q&A-13(a) states that an annuity payment period may be changed in accordance with the provisions set forth in paragraph (b) of this A-13 or in association with an annuity payment increase described in A-14 of this section.

Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a) states that except as otherwise provided in this section, all annuity payments (whether paid over an employee's life, joint lives, or a period certain) must be non-increasing or increase only in accordance with one or more of the following —

- 1) With an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index as defined in paragraph (b) of this A-14 for a 12-month period ending in the year during which the increase occurs or the prior year;
- (2) With a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in paragraph (b) of this A-14 since the annuity starting date, or if later, the date of the most recent percentage increase. However, in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;
- (3) To the extent of a reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);
- (4) To pay increased benefits that result from a plan amendment;
- (5) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the employee's death; or
- (6) To the extent increases are permitted in accordance with paragraph (c) or (d) of this A-14.

Treas. Reg. § 1.415(b)-(1)(b)(1)(iii) provides that if a participant will have distributions commencing at more than one annuity starting date, the limitations of section 415 of the Code must be satisfied as of each of the annuity starting dates

## ANALYSIS

Section 401(a) of the Code provides a tax deferral for retirement benefits accumulated

in a qualified pension plan. Section 401(a)(9) of the Code and the Regulations ensure that these tax-deferred accumulations are, in fact, used during retirement and do not escape taxation.

Treas. Reg. § 1.401(a)(9)-6 sets forth the rules governing required distributions from defined benefit plans and annuity contracts. Treas. Reg. § 1.401(a)(9)-6, Q&A-13(a) states that an annuity payment period may be changed in association with an annuity payment increase described in A-14 of this section. Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4) provides that annuity payments from a qualified plan may increase if the payment of increased benefits results from a plan amendment.

Company A's proposed amendment to Plan A and Plan B adds a lump sum option for Covered Individuals under which Covered Individuals will have the opportunity to elect, during a specified window period of no more than 180 days, to receive in lieu of their current annuity, the actuarial present value of their remaining annuity payments in the form of an immediate lump sum payment, and to the extent the law requires, a qualified joint and survivor annuity (including a single life annuity for retirees who are not married), or a qualified optional survivor annuity. Elections by covered individuals to receive a new distribution option will be subject to applicable spousal consent.<sup>5</sup>

The proposed amendment will result in a change in the annuity payment period. The annuity payment period will be changed in association with the payment of increased benefits as a result of the addition of the lump sum option. In addition, Covered Individuals who wish to change their current distribution option will be considered to have a new annuity starting date as of the first date of the month in which their new benefit is payable. Because the ability to select a lump sum will only be available during a limited window, the increased benefit payments will result from the proposed plan amendment and, as such, are a permitted benefit increase under Treas. Reg. § 1.401(a)(9)-6, Q&A-14(a)(4).

In order for a plan to remain qualified under section 401(a) of the Code, the calculation of the value of the benefit elected under the lump sum window option must comply with the requirements of section 417(e) and the regulations thereunder. Under section 6.03 of Revenue Procedure 2014-4, subject to certain exceptions, the IRS generally does not issue letter rulings on matters involving qualification issues under section 401 through 420 of the Code. Qualification matters are generally handled by the Employee Plans Determination letter program as provided in Revenue Procedure 2014-6. Accordingly, we have not considered, among other matters, whether the lump sum window benefits comply with the requirements of section 417(e) and the regulations thereunder with respect to the amount of the distribution and minimum present value requirement that is applied based on the present value of the normal retirement benefit. Instead, this letter ruling is based on your representations that the lump sum window option satisfies section 417(e) of the Code and section 1.417(e)-1 of the regulations.

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<sup>5</sup> Spousal consent must include, where the law requires, both the current spouse and a former spouse if the annuitant has remarried since the annuity starting date.

## RULING

Therefore, in this circumstance, the minimum distribution requirements of Section 401(a)(9) of the Code will not be violated if Company A amends Plan A and Plan B to offer a lump sum payment option during a limited window period of no more than 180 days to Covered Individuals for whom annuity payments have already begun.

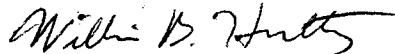
Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction above under any other provision of the Code, including Sections 401(a)(4), 411, 415, 417 and 436 or of Title I of ERISA. No opinion is expressed regarding the qualification of the Plan.

In addition, no opinion is expressed on whether the method for valuing benefits under the lump sum window option satisfies the requirements of section 417(e) and the regulations thereunder.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling please contact \*\*\*\*\* Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



William B. Hulteng, Manager  
Employee Plans Technical

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: